

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Lukata Young, Police Officer (S9999R), City of Newark

List Removal Appeal

CSC Docket No. 2016-3193

ISSUED: OCTOBER 3, 2018 (ABR)

Lukata Young, represented by Jean Kim, Esq., appeals the removal of his name from the Police Officer (S9999R), City of Newark eligible list on the basis of an unsatisfactory criminal background, unsatisfactory driving record and failure to complete pre-employment processing.

The appellant took the open competitive examination for Police Officer (S9999R), Newark, which had a closing date of September 4, 2013, achieved a passing score and was ranked as a non-veteran on the subsequent eligible list. The eligible list promulgated on May 2, 2014 and expired on March 22, 2017. The appellant's name was certified to the appointing authority on August 27, 2015. In disposing of the certification, the appointing authority requested the removal of the appellant's name due to an unsatisfactory criminal background, unsatisfactory driving record and failure to complete pre-employment processing. With respect to unsatisfactory criminal history, the appointing authority submitted a copy of a New Jersey Automated Complaint System (ACS) Inquiry which showed that the appellant was charged with possession and use of a controlled dangerous substance (marijuana) with intent to distribute in violation of N.J.S.A. 2C:35-5a(1) and N.J.S.A. 2C:35-5b(12) in September 2002. It indicated that the charges were diverted through the Pre-Trial Intervention Program (PTI) and ultimately dismissed in April 2004. In his Background Investigation Questionnaire (Questionnaire), the appellant claimed that the aforementioned drug charges were brought against him because during a traffic stop, marijuana was found in the backpack of a passenger traveling in his car. The ACS Inquiry also indicated that in August 2006, the appellant was charged with bail jumping in violation of *N.J.S.A.* 2C:29-7 and contempt of court in violation of *N.J.S.A.* 2C:29-9B and that both charges were dismissed in January 2007. The ACS Complaint Narrative Inquiry for the contempt charge indicated that it was brought against the appellant based on an allegation that he violated a restraining order which prohibited him from visiting or contacting an ex-girlfriend.

In addition to the ACS inquiry, the appointing authority also noted that police reports and documents showed that the appellant had received seven summonses for disorderly persons offenses and municipal ordinance violations between October 1996 and January 2011, including charges of obstructing administration of the law in October 1996; fare evasion in July 1998; filing a fictitious report with law enforcement in August 2006; making communications in an annoying manner in September 2006; theft by unlawful taking in October 2006; causing a disturbance in January 2011; and disorderly conduct in January 2011. The supporting documentation indicated that the appellant pled guilty to causing a disturbance in violation of Code of the City of Newark § 20:2-6 in January 2011 and paid a \$25 fine, while the remaining summonses were dismissed. Questionnaire, the appellant claimed that he was charged with filing a fictitious police report in August 2006 after he filed a police report seeking a restraining order against an ex-girlfriend, and that the ex-girlfriend "lied to the officer," but that the charge was dropped after an investigation. The appellant also indicated in the Questionnaire that he was charged with theft by unlawful taking in October 2006 after the same ex-girlfriend accused him of stealing his own belongings. The appellant also stated that the January 2011 disorderly conduct and disturbance charges stemmed from an incident where his wife was stopped for speeding while transporting him to the hospital and he was forced to wait outside of the car in cold weather while suffering from an abscess.

With regard to the appellant's driving record, the appointing authority submitted a copy of the appellant's driver's abstract which showed a total of 17 driver's license suspensions, including three covering periods after the closing date.¹ Specifically, the appellant's driving record included seven suspensions pursuant to the Parking Offenses Adjudication Act, two suspensions for failure to appear in court, five suspensions for failure to pay an insurance surcharge, one suspension for driving a motor vehicle during a suspension period, one suspension for having an uninsured motor vehicle and one suspension for failure to comply with a court order. The appellant's driver's abstract also showed 12 violations between 1996 and 2012, including driving without a license in October 1996; improperly letting off or taking on passengers in September 2002; improper display of or the use of fictitious license plates in November 2003 and November 2011; unsafe operation of a motor vehicle in September 2005; a speeding violation in October 2006 and two speeding violations in May 2011; using a handheld cellphone while driving in October 2008;

¹ Specifically, these suspensions were from May 3, 2013 to November 26, 2013; February 23, 2014 to May 5, 2014; and August 17, 2014 to February 26, 2015.

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improper maintenance of vehicle lamps in November 2008; obstructing the passage of other vehicles in January 2012; and for driving while his license was suspended in June 2012. Lastly, the appointing authority indicated that the appellant failed to complete pre-employment processing because he did not submit a credit report, as required.

On appeal to the Civil Service Commission (Commission), the appellant seeks his restoration to the subject eligible list or, alternatively, an opportunity to resubmit his application to the appointing authority with clarifying information and a The appellant argues that the proper standard for review of his removal from the subject eligible list should be whether his removal was arbitrary and capricious. He contends that a review under that standard would support his restoration to the subject eligible list. In that regard, appellant contends that his arrests do not support his removal from the subject eligible list as they involved "small incidents" where the charges were ultimately dismissed. appellant maintains that these incidents do not demonstrate that he possessed a mental condition, cognitive impairment or anti-social tendencies that would render him unfit to serve as a Police Officer. Additionally, the appellant claims that his driving record does not support his removal from the subject eligible list because it merely shows parking and other minor violations used by towns as a revenue sources, rather than offenses that demonstrate a pattern of dangerous or reckless behavior. Notably, he suggests that improper weight was given to a 2015 arrest and search² involving law enforcement gear that he was transporting which occurred during an illegal traffic stop made after a police officer misread the appellant's driver's license and insurance status. Specifically, he contends that the officer confused his record as the registered owner of a vehicle with his wife's driving record. With regard to the domestic violence charges, the appellant stresses that he truthfully answered "yes" in response to a question in the Questionnaire about being involved in domestic violence incidents and acknowledges that he did not give any specific information about that involvement. Additionally, the appellant admits that some of his answers in his Questionnaire were inaccurate or incomplete, but he contends that N.J.S.A. 40A:13-123.1a does not preclude giving him an opportunity to correct his Questionnaire and elaborate on his responses contained therein. Finally, the appellant argues that his removal may be product of bias against his race as an African-American; his status as an outsider who moved from Pennsylvania to New Jersey; and his political support for Mayor Ras Baraka. The appellant submits news articles discussing issues with out-of-state residents being prosecuted for gun possession charges and the underrepresentation of minorities in law enforcement.

² The record indicates that the appointing authority did not cite the appellant's 2015 arrest in its request to remove his name from the subject eligible list. It is noted that the appointing authority has not addressed this arrest in its response to the instant appeal.

In response, the appointing authority, represented by France Casseus, Esq., Assistant Corporation Counsel, contends that it appropriately removed the appellant's name from the subject eligible list on the basis of an unsatisfactory criminal background, unsatisfactory driving history and his failure to complete preemployment processing. It emphasizes that an applicant's arrest history may properly be considered when determining his or her eligibility for a law enforcement title and that in the instant matter, the totality of the appellant's criminal record supports his removal. Specifically, it cites his arrests for possession of a controlled dangerous substance in September 2002 and domestic violence in August 2006; a series of charges within a short timeframe in 2006; charges for crimes of dishonesty, including filing a false police report and theft; and the fact that the appellant's arrests and the majority of the criminal charges occurred when he was an adult³ as factors which support his removal from the subject eligible list. With respect to the appellant's driving record, the appointing authority observes that the appellant does not deny his history of driver's license suspensions. The appointing authority also notes that the appellant acknowledges that he failed to properly complete the Questionnaire. It notes that the Questionnaire clearly states the consequences for falsifications and omissions. Furthermore, it notes that applicants can request additional time to gather required information, but that the appellant did not make such a request. Lastly, the appointing authority argues that there is no evidence that the appellant was removed because of his political affiliation and it contends that the appellant's criminal background, driving history and failure to complete the pre-employment process are all factors that justify his removal from the subject eligible list because they adversely relate to the Police Officer position he seeks.

CONCLUSION

N.J.S.A. 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 provide that an eligible's name may be removed from an eligible list when an eligible has a criminal record which includes a conviction for a crime which adversely relates to the employment sought. The following factors may be considered in such determination:

- a. Nature and seriousness of the crime:
- b. Circumstances under which the crime occurred;
- c. Date of the crime and age of the eligible when the crime was committed;
- d. Whether the crime was an isolated event; and
- e. Evidence of rehabilitation.

The presentation to an appointing authority of a pardon or expungement prohibits an appointing authority from rejecting an eligible based on such criminal conviction, except for law enforcement, correction officer, juvenile detention officer,

 $^{^3}$ The Commission notes that the appellant was 24 years old at the time of the September 2002 arrest and 28 years old at the time of the August 2006 arrest.

firefighter or judiciary titles and other titles as the Chairperson of the Commission or designee may determine. It is noted that the Appellate Division of the Superior Court remanded the matter of a candidate's removal from a Police Officer eligible list to consider whether the candidate's arrest adversely related to the employment sought based on the criteria enumerated in *N.J.S.A.* 11A:4-11. *See Tharpe v. City of Newark Police Department*, 261 *N.J. Super.* 401 (App. Div. 1992).

Participation in the PTI Program is neither a conviction nor an acquittal. See *N.J.S.A.* 2C:43-13(d). See also Grill and Walsh v. City of Newark Police Department, Docket No. A-6224-98T3 (App. Div. January 30, 2001); In the Matter of Christopher J. Ritoch (MSB, decided July 27, 1993). N.J.S.A. 2C:43-13(d) provides that upon completion of supervisory treatment, and with the consent of the prosecutor, the complaint, indictment or accusation against the participant may be dismissed with prejudice. In Grill, supra, the Appellate Division indicated that the PTI Program provides a channel to resolve a criminal charge without the risk of conviction; however, it has not been construed to constitute a favorable termination. Furthermore, while an arrest is not an admission of guilt, it may warrant removal of an eligible's name where the arrest adversely relates to the employment sought. Thus, the appellant's arrest and entry into the PTI program could still be properly considered in removing his name from the subject eligible list. Compare In the Matter of Harold Cohrs (MSB, decided May 5, 2004) (Removal of an eligible's name reversed due to length of time that had elapsed since his completion of his PTI).

Additionally, although an eligible's arrest and/or conviction for a disorderly persons offense cannot give rise to the disability arising under *N.J.A.C.* 4A:4-4.7(a)4, the fact that an eligible was involved in such activity may reflect upon the eligible's character and ability to perform the duties of the position at issue. *See In the Matter of Joseph McCalla*, Docket No. A-4643-00T2 (App. Div. November 7, 2002) (Appellate Division affirmed the consideration of a conviction of a disorderly persons offense in removing an eligible from a Police Officer eligible list). Here, while the appellant was arrested for a number of disorderly persons offenses which did not rise to the level of crimes, the appellant's arrests could still be considered in light of the factors noted in *N.J.S.A.* 11A:4-11 and *N.J.A.C.* 4A:4-4.7(a)4 to determine whether they adversely related to the employment sought.

N.J.A.C. 4A:4-4.7(a)11 allows the Commission to remove an eligible's name from an eligible list for other valid reasons. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove the appellant from an eligible list was in error.

In the instant matter, the appellant's unsatisfactory criminal history supports the appointing authority's decision to remove his name from the subject eligible list. Although the appellant alleges that bias against his status as an African-American, as an outsider and as a political supporter of Mayor Baraka played a role in his removal from the subject eligible list, he provides no evidence to support his allegations. Since the subject eligible list involves a law enforcement title, the appointing authority was permitted to consider whether the appellant's arrest history involved activity which reflected upon his character and ability to perform the duties of the Police Officer position. On appeal, while the appellant contends that a 2015 arrest was made pursuant to an illegal search resulting from an unlawful traffic stop, but does not address the other items in his criminal history. Regardless of the merits of that arrest, the Commission notes that the appellant's record contains several criminal charges dating between 1996 and 2011. Among the more serious incidents during that timeframe is a September 2002 arrest for possession and use of marijuana with intent to distribute, an August 2006 arrest for bail jumping and contempt of court based upon allegations that he violated a restraining order, a criminal charge for filing a fictitious report with law enforcement in September 2006 and a criminal charge of theft by unlawful taking in October 2006. The appellant does not submit any arguments as to why the September 2002 or August 2006 arrests in his criminal record do not warrant his removal from the subject eligible list. As to the charges for filing a fictitious report with law enforcement and theft by unlawful taking, while the appellant claimed in the Questionnaire that they arose because an ex-girlfriend made false statements to police, he has not provided any evidence to corroborate his account of those incidents. Moreover, the appellant was an adult when a majority of the charges in his criminal record were brought against him. It is recognized that a municipal Police Officer is a law enforcement employee who must enforce and promote adherence to the law. Municipal Police Officers hold highly visible and sensitive positions within the community and that the standard for an applicant includes good character and an image of the utmost confidence and trust. recognized that a municipal Police Officer is a special kind of employee. primary duty is to enforce and uphold the law. He carries a service revolver on his person and is constantly called upon to exercise tact, restraint and good judgment in his relationship with the public. He represents law and order to the citizenry and must present an image of personal integrity and dependability in order to have the respect of the public. See Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), cert. denied, 47 N.J. 80 (1966). See also In re Phillips, 117 N.J. 567 Clearly, a criminal history with charges that include possession of marijuana with intent to distribute, violating the terms of a restraining order, bail jumping, filing a false police report and theft reflects poorly upon the appellant's ability to enforce and promote adherence to the law.

Additionally, the appellant's unsatisfactory driving record also supports his removal from the subject eligible list. Although the appellant contends that his driving record does not support his removal from the subject eligible list as it does not contain any "serious offenses," such as reckless driving or driving while intoxicated, his driving history does include 12 motor vehicle infractions and 17

driver's license suspensions. This history shows a clear pattern of disregard for the law and questionable judgment on his part. Such qualities are unacceptable for an individual seeking a position as a municipal Police Officer. Accordingly, the foregoing demonstrates sufficient grounds to remove the appellant's name from the subject eligible list on the basis of an unsatisfactory criminal record and an unsatisfactory driving record and it is therefore unnecessary to address whether the appellant's failure to submit a credit report would also support his removal from the subject eligible list.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE CIVIL SERVICE COMMISSION ON THE 3RD DAY OF OCTOBER, 2018

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